

## **REMARKS**

In the Office Action dated October 2, 2009, claims 7-12 were rejected under §112, second paragraph as being indefinite. In response, where appropriate, the claims have been amended to use "configured to" language to describe the operation of the controller, which is the accepted manner of allowing functions performed by a computer or a control circuit to be positively recited in a claim in terms of structure. Additionally, claim 8 has been cancelled. Additionally, claims 9 and 10 have been amended to positively recite that the housing has an electrically conductive area that is used as the return electrode.

All claims of the application are therefore submitted to be in full compliance with all provisions of §112, second paragraph.

Claims 7-12 were rejected under 35 U.S.C. §102(b) as being unpatentable over Chirife. The Examiner stated the Chirife reference discloses the employment of a controller to select a pacing mode and to operate a pacemaker in the selected pacing mode. The Examiner considered claims 7-12 to contain functional language which the Examiner stated did not impart any further structural limitations over the prior art.

In view of the aforementioned changes that have been made in the language of the claims, particularly independent claim 7, Applicant submits that this language must now be taken into account in comparing the subject matter of claim 7 against the prior art, in particular against the Chirife reference. Applicants submit the Chirife reference does not disclose or suggest an implantable pacemaker that has a controller that determines whether atrial arrhythmia is present and then switches to controlling the pulse generator in a non-p-wave synchronous mode and that, in said

non-p-wave synchronous mode, further controls the pulse generator to increase the delivery rate of the pacing pulses to an increased delivery rate by continuing to evaluate the atrial impedance measured by the impedance measuring unit, as an indication of atrial distention during the atrial arrhythmia.

Although the Chirife reference, like many hundreds if not thousands of pacemaker references, discloses making an impedance measurement, there is no teaching or suggestion in the Chirife reference of a controller that is configured to operate in such a manner.

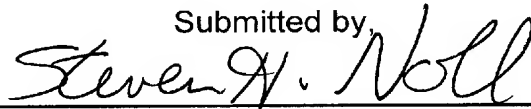
As a separate argument in support of the patentability of dependent claim 11, Applicant further submits that the Chirife reference does not disclose or suggest using a closed loop to deliver pacing pulses to the ventricle (the Chirife reference discloses only atrial stimulation) in order to set the aforementioned increased delivery rate by maintaining the atrial impedance substantially equal to a reference value.

The other dependent claims add further structure to the novel and non-obvious combination of claim 7, and are not anticipated by the Chirife reference for the same reasons as discussed above.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,



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